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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNIS PATRICK HUGHES,

Defendant and Appellant.

H040764

(Monterey County
Super. Ct. No. SS033580A)

On December 19, 2003, the Monterey County District Attorney filed a complaint in which Dennis Patrick Hughes (defendant) was charged with taking a vehicle without the owner's consent. (Veh. Code, § 10851, subd. (a).)

The record indicates that at some point defendant pleaded guilty.¹ On January 27, 2004, defendant appeared for sentencing. Imposition of sentence was suspended. The court placed defendant on probation for three years with various terms and conditions, including that he serve 62 days in county jail with credit for time served. A notation in the minute order from the sentencing hearing indicates that defendant was to be released to a residential treatment program after serving 300 days in jail. It appears that defendant was sentenced on several probation violations at the same time. In one of those cases he was ordered to serve 365 days in county jail, with credit for 235 days, leaving 130 days to be served.

¹ We do not know if the guilty plea was part of a plea bargain.

Defendant appeared in court on a new probation violation on April 22, 2004. Defendant admitted that he had violated his probation. The defendant was referred to the probation department for preparation of a supplemental report; and the matter was continued to May 20, 2004.² According to the probation officer's report prepared for the May 20 hearing. The defendant was scheduled to be released from custody on April 23, 2004. However, on March 11, 2004, he was granted an early release into the New Life Community Services drug treatment program. On April 3, 2004, defendant was seen walking in and out of traffic and stumbling from the sidewalk into the roadway. Officers determined that he was unable to care for himself and arrested defendant for being under the influence of drugs and/or alcohol.

Ultimately, on May 18, 2004, pursuant to Penal Code section 1203.03, the court placed defendant temporarily in the North Kern State prison for a period not to exceed 90 days for a diagnostic evaluation. Defendant was returned to superior court on July 8, 2004.

On August 17, 2004, the court chose to reinstate defendant's probation, provided that (1) he stipulate to the imposition of an upper term sentence of three years in the event he violated his probation and that (2) he enter the Jericho Project addiction program and waive his right to any custody credits while there. Defendant so agreed. Accordingly, the court sentenced defendant to a prison term of three years, suspended execution of sentence, and placed him on probation for three years. Defendant was ordered to complete the Jericho Project program "entirely, completely." For all other crimes for which defendant was on probation, probation was revoked and terminated and the prosecutor dismissed a drug possession charge.

² On May 3, 2004, defendant appeared in court yet again to be arraigned on a probation violation based on his picking up another case.

On August 23, 2004, the probation officer filed a petition to revoke defendant's probation. The probation officer alleged that defendant had gone into the Jericho Project program on August 18, 2004, and had walked away two days later on August 20, 2004.

An out-of-court entry by the court clerk indicated that defendant was not in custody and was being notified by mail of a hearing that was set for August 26, 2004. On August 26, 2004, defendant failed to appear for the hearing, but his public defender was present. The court revoked defendant's probation and issued a bench warrant.

Another out-of-court entry by the court clerk dated November 20, 2013, indicates that the bench warrant was returned as served and filed. The case was set for 1:30 p.m. the same day for arraignment on the bench warrant. Defendant appeared and counsel was appointed; counsel denied the probation violation. Thereafter, the matter was continued. On December 12, 2013, defendant admitted that he had violated his probation. The matter was continued until January 9, 2014.

Finally, on February 11, 2014, the court ordered that the previously imposed but suspended sentence be executed. The probation officer indicated that defendant's custody credits were 249 actual days and 168 days of conduct credit "calculated at both 33 and 50 percent." Accordingly, the court awarded defendant 417 days of presentence custody credit. Defendant did not challenge the number of custody credits that he was awarded.³ The court ordered that defendant pay a previously imposed but suspended probation revocation fine.

³ The record is at best ambiguous and in some instances contradictory as to when and for how long defendant was in county jail/state prison/ treatment programs. Accordingly, any error, if there is error in the calculation of defendant's custody credits, is impossible for this court to resolve. However, as this court has stated before, "the trial court has jurisdiction to resentence a prisoner by amending the judgment to correct its original, erroneous calculation of his presentence credits, and there is no time limitation upon the right to move the trial court to correct the sentence due to miscalculation of custody credits." (*People v. Little* (1993) 19 Cal.App.4th 449, 452.)

Defendant filed a notice of appeal on March 5, 2014, in which he appealed from the judgment based on the ground that the court committed sentencing error.

Defendant's appointed counsel has filed an opening brief in which he raises no issues. Counsel asks this court to conduct an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436. Counsel has declared that defendant was notified that no issues were being raised by counsel on appeal; that an independent review under *Wende* was being requested; and that defendant was notified that he could file a supplemental brief with this court.

On September 9, 2014, by letter, we notified defendant of his right to submit written argument on his own behalf within 30 days. That time has passed and we have not received a response from defendant.

Upon our independent review of the record, we conclude there are no meritorious issues to be argued, or that require further briefing on appeal. Defendant received the sentence that he agreed the court could impose if he violated his probation.

Disposition

The judgment is affirmed.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.